

Tribal Shellfish Management

Introduction

Shellfish have been a mainstay of western Washington Indian tribes for thousands of years. Clams, crab, oysters, shrimp, and many other species were readily available for harvest year 'round, and the relative ease with which large amounts could be harvested, cured, and stored for later consumption made shellfish an important source of nutrition - nearly as important as salmon.

Shellfish remain important for economic, subsistence, and ceremonial purposes. The rapid decline of many western Washington salmon stocks, due in large part to habitat loss from the region's burgeoning human population, has pushed shellfish to the forefront of many tribal economies.

The tribes have two distinct types of shellfish harvests – commercial and ceremonial/subsistence. Commercial harvests are fisheries for profit. Shellfish harvested during a commercial fishery are sold to licensed shellfish buyers who in turn either sell shellfish directly to the public or to other commercial entities – such as wholesalers, restaurants, or other distributors. Tribes collect taxes from tribal members who sell shellfish. Those taxes are returned to the tribal programs to help pay for natural resource management and environmental programs.

Ceremonial and subsistence harvests are intended for tribal use only. Shellfish has a central role in tribal gatherings – from naming ceremonies and funerals, to elder honorings and the unveiling of a new story pole. All of these events feature clams and oysters steamed over a bed of white-hot rocks, or horse clams cooked on sticks over an alder fire.

Treaty Shellfish Rights

As with salmon, the tribes' guarantees to harvest shellfish lie within a series of treaties signed with representatives of the federal government in the mid-1850s. Language pertaining to tribal shellfish harvesting is included in this section:



A harvest of Dungeness crab is unloaded from a tribal fishing boat in LaPush.

“The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States; and of erecting temporary houses for the purposes of curing; together with the privilege of hunting and gathering roots and berries on open and unclaimed lands. Provided, however, that they shall not take shell-fish from any beds staked or cultivated by citizens.”

– Treaty of Point No Point, Jan. 26, 1855

In exchange for the peaceful relinquishment of what is today most of western Washington, the tribes reserved the right to continue to harvest finfish and shellfish from all of their usual and accustomed grounds and stations. The tribes were specifically excluded from harvesting shellfish from areas “staked or cultivated” by non-Indian citizens.

Clamming was dominated by the tribes well into the 1920s, but as land continued to be purchased by white settlers, “no trespassing” signs began appearing on Puget Sound beaches. The tribes were slowly excluded from their traditional shellfish and finfish harvest areas.

Tribal efforts to have the federal government’s treaty promises kept began in the early 1900s. The United States Supreme Court ruled in a case, *U.S. v. Winans*, that when a treaty reserves the right to fish at all usual and accustomed places, the state may not preclude access to those places.

In 1974, U.S. District Court Judge George Boldt ruled the tribes had reserved the right to half of the harvestable salmon and steelhead in western Washington. The “Boldt Decision,” as it has become known, was upheld by the U.S. Supreme Court in 1979.

Beginning in the late 1970s, tribal and state fisheries staff have worked together to develop fisheries regimes to ensure harvest opportunity for Indian and non-Indian alike. This new atmosphere of cooperative natural resources management gave the tribes hope that their treaty-reserved rights to shellfish harvest and management could be restored.

Talks between the tribes and the state began in the mid-1980s, but were unsuccessful. In 1989 the tribes were forced to file suit in federal court to have treaty shellfish rights restored. Years of negotiations were unsuccessful, and the issue went to trial in May 1994.

The Rafeedie Decision And Implementation Plan

Federal District Court Judge Edward Rafeedie heard testimony from tribal elders, biologists, historians, treaty experts, as well as testimony from private property owners, non-Indian commercial shellfish growers, state employees, and others during the trial in Seattle.

As with the court battle to have their rights to salmon harvest and management restored, the tribes’ arguments in the shellfish trial centered around the Stevens Treaties – specifically what the treaty language meant at the time they were signed.

Rafeedie’s ruling followed in the footsteps of the Boldt Decision. He ruled the treaties’ “in common” language meant that the tribes had reserved harvest rights. The tribes reserved the right to harvest up to half of all shellfish from all of the usual and accustomed places, except those places “staked or cultivated” by citizens. The tribes could continue to harvest shellfish from all of the areas that they always had, except from beaches that had no shellfish beds and were specifically set aside for non-Indian shellfish cultivation purposes.

“A treaty is not a grant of rights to the Indians, but a grant of rights from them,” Rafeedie wrote in his December, 1994 decision, adding that the United States government made a solemn promise to the tribes in the treaties that they would have a permanent right to fish as they had always done.

Rafeedie ruled all public and private tidelands within the case area are subject to treaty harvest, except for shellfish contained in artificially created beds. His decision requires tribes planning to harvest shellfish from private beaches to follow many time, place, and manner harvest restrictions.

Each party to the court case appealed various portions of Rafeedie’s ruling, and the U.S. Court of Appeals heard all of the arguments in a May 1997 hearing. In 1998, the U.S. 9th Circuit Court of Appeals let stand Rafeedie’s major ruling. The final court ruling came in May 1999 when the United States Supreme Court refused to hear appeals to lower court rulings. The Supreme Court’s decision came five years after Rafeedie’s initial ruling in the case, 25 years after the original Boldt Decision.

The Era Of Cooperation

The tribes have moved past litigation and into cooperative co-management of their treaty-reserved resources with the State of Washington. Tribal shellfish managers have developed harvest management and supplementation plans, and harvest data is collected and shared with other tribes and the state.

Examples of cooperation can be found throughout the Puget Sound and coastal region. On Hood Canal, for example, tribes have struck harvest agreements with private beach owners and the U.S. Navy.

On northern Puget Sound, tribal diggers are harvesting shellfish alongside non-Indians on Hat Island, a small, largely privately owned island near Everett. For thousands of years, the island has been a culturally significant place for the Tulalip Tribes to harvest clams and other shellfish. In recent decades, tribal members were harassed – and even threatened with violence – when they attempted to exercise their treaty-reserved right to harvest shellfish on the island’s beaches. Today, tribal harvesters peacefully harvest clams alongside island residents. On Hat Island and elsewhere, some property owners are working with tribes to develop management agreements so scientific population surveys, harvest planning and possible cooperative shellfish enhancement activities can occur.

FY 00 Activities

Treaty tribes currently harvest approximately 757,000 pounds of clams; 2.8 million oysters; 4 million pounds of crab; and 500,000 pounds of shrimp annually. These fisheries occur throughout Washington coastal areas and Puget Sound.

The tribes and state have entered into 27 different regional management plans that for a variety of shellfish species. Each species has unique management requirements to ensure biologically sound harvests can occur. Activities during FY 00 included:

- Providing timely harvest regulations to all affected parties.
- Conducting on-site beach surveys.
- Monitoring all tribal shellfish harvests.
- Seeding beaches to enhance clam populations.
- Developing monitoring programs to ensure compliance with tribal harvest regulations. The Skokomish, Port Gamble S’Klallam, Jamestown S’Klallam and Lower Elwha Klallam tribes developed an on-the-water monitoring program for their geoduck fisheries. Through the program, implemented through the Point No Point Treaty Council, the tribes’ fisheries management consortium, enforcement officers check the sea bottom for

evidence of resource abuse, weigh catches on each boat and tag the catches before the vessels return to shore. The program ensures that the resource is not overharvested, and that lower grade clams are not discarded.

- Undertaking major co-management efforts with the State of Washington in developing regional harvest plans for geoduck fisheries. These plans include agreements on monitoring harvest, compliance agreements, harvest methodology, and enforcement cooperation. Improvements in these areas will continue throughout the year.
- Testing water quality and shellfish, and obtaining certification from the state Health Department before opening beaches to harvest. Tribes have a separate agreement with the Washington State Department of Health for water testing to ensure harvests can safely occur. Tribes conducted regular monitoring of beaches to ensure they remain safe for harvest.
- On the national level, tribal and NWIFC representatives were active participants in the Interstate Shellfish Sanitation Conference (ISSC). The national organization of shellfish-producing states develops and recommends shellfish sanitation regulations to the federal Food and Drug Administration.

While tribes have participated for a number of years as non-voting members of the ISSC executive board, the organization is now considering granting full voting privileges to NWIFC-member tribes.

- On the state level, tribes participated on the Shellfish Advisory Committee, a group of tribal representatives, legislators, local governments and private shellfish growers that advises the state Department of Health and legislative committees on important legislation affecting the shellfish industry. This forum has proven to be highly effective in influencing state legislation to protect shellfish resources.

Conclusion

While tribes have made great strides in shellfish management following the Rafeedie Decision, they are seriously hampered in their efforts by a severe lack of funding. Although tribes have begun to formulate some of the necessary shellfish management tools, inadequate staffing and funding prevent the tribes from realizing their full potential.

Specialized staff are needed to successfully develop effective shellfish programs. Shellfish biologists, certified technicians, enforcement personnel and other staff are all critical to effective shellfish management plans. Expertise in statistics, biometrics and health certification also is necessary.

For hard-shell clam management, additional funding is needed for improving data management system for catch reporting and population assessment and to assist enhancement efforts. Research on methodologies for population assessment and techniques is especially needed.

Public intertidal areas that are jointly managed by the tribes and state would benefit from increased funding by providing additional resources to manage and enhance the publicly shared areas. Current tribal and state efforts to move forward on enhancement activities in these areas are hampered by inadequate funding.

For shrimp and crab, data gathering is a critical need. Little research has been done to gauge shrimp and crab

populations. Data collection and research are needed to increase knowledge of these fisheries with an eye toward development of inseason population assessment methodologies.

Dungeness crab, for example, provide important fisheries for Indian and non-Indian harvesters. True resource conservation, however, has been difficult to achieve because of a lack of information on crab abundance. Adequate management funds are needed for data collection and analysis, a crab molting (shell-shedding) study, improved survey systems and effective enforcement.

More data also is needed on “new” tribal fisheries, such as sea cucumbers, sea urchins, crawfish and other lesser-known species. Management plans must be developed cooperatively with the state, requiring additional staffing.

The future of western Washington’s thriving shellfish resource relies upon the continuation of existing cooperative management between the tribes and their state counterparts.

For More Information

For more information about the natural resource management activities of the treaty Indian tribes in western Washington, contact the Northwest Indian Fisheries Commission, 6730 Martin Way E., Olympia, WA., 98516; or call (360) 438-1180. Visit the NWIFC home page at www.nwifc.wa.gov.